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Negotiating international civil society support: the case of Ethiopia's 2009 Charities and Societies Proclamation

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ABSTRACT

Since 2005, international civil society support has faced increasing resistance around the world. Ethiopia is widely recognized as a key example of this so-called Closing Space phenomenon. With the 2009 Charities and Societies Proclamation (CSP) Ethiopia has established strict regulations on civil society organizations that, in particular, restrict the ability of local associations to make use of foreign funding and the range of activities allowed for foreign (funded) organizations. This paper traces the process of international negotiations that has accompanied the drafting of the CSP and identifies the consequences of these negotiations for international civil society support in the country. Focusing on the interaction between foreign “donors” and the Ethiopian government, it analyzes (a) what precisely these negotiations have been about, (b) to what extent these negotiations have actually influenced the content of the CSP, and (c) how the CSP as finally adopted has actually affected international civil society support in Ethiopia.

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1. Introduction

Increasing restrictions on international civil society support constitute a key element in the much-discussed backlash against democracy promotion.¹ In particular, the last 15 years have seen the proliferation of so-called NGO laws that, amongst other things, impose constraints on the access of local civil society organizations (CSOs) to foreign support and thereby restrict the space of both local CSOs and international democracy promoters.² In this context, “[e]fforts to pressure governments not to adopt restrictive NGO laws have surged as an area of diplomatic engagement”.³ While scholars have started to analyze the overall phenomenon of a “closing space” around civil society support, existing studies are mostly policy-oriented and/or focus on analyzing the causes that explain its spread.⁴ We, therefore, lack empirical research on these diplomatic attempts to prevent processes of closure as well as on the negotiations they give rise to. How do “donor” governments that engage in civil society support try to

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convince “recipient” governments to renounce or temper planned restrictions? How do recipient governments respond? And what are the dynamics and the consequences of such intergovernmental communication?

This paper contributes to closing this research gap by adopting a focus on democracy promotion negotiation as outlined in the introduction to this special issue. Empirically, it zooms in on one prominent case, the Ethiopian Charities and Societies Proclamation (CSP). Adopted in early 2009, the CSP is usually considered as a prime example of a particularly harsh NGO law, and Ethiopia is, hence, among the most frequently mentioned cases of closing space.⁵ At the same time, when the controversy over the CSP erupted, Ethiopia was considered “the largest African recipient of Overseas Development Assistance (ODA)”, with much of this assistance being “directed towards NGOs”.⁶ The CSP imposed strict regulations on this kind of foreign support; most notably, foreign CSOs and foreign-funded Ethiopian organizations are prohibited from working on a whole range of issues, including “the advancement of human and democratic rights.”⁷ In the nine months before the CSP was adopted, representatives of North-Western “donors” – and, in particular, the ambassadors from the US, the UK and France – met on several occasions with Ethiopian counterparts, including Ethiopian Prime Minister (PM) Meles Zenawi, to discuss changing draft versions of the law. US embassy reports on these meetings have been published by Wikileaks.⁸

Given the dearth of empirical knowledge on intergovernmental negotiations in the policy field at hand, and the exceptional insights that the leaked embassy cables offer into this specific case, the following analysis primarily aims at empirically tracing the diplomatic exchange that has accompanied the drafting of the CSP and identify its consequences for international civil society support in Ethiopia. After a brief overview of the context in Ethiopia, we reconstruct the process of negotiations based on the available US embassy reports. In doing so, we (a) systematically identify the issues that were negotiated and (b) assess the extent to which these negotiations have influenced the content of the CSP. Our answer to this second question is, however, tentative only because our analysis of the international negotiations does not account for the intra-Ethiopian process of drafting the CSP. In an additional section, we analyze (c) how international civil society support has changed following the adoption of the CSP.

In a nutshell, we argue that the negotiations between the Ethiopian government and North-Western donor governments covered a broad range of issues ranging from specific provisions in the planned legislation (policy formulation) up to different notions of democracy that underlie the diverging viewpoints on international civil society support (normative premises). According to our analysis, the impact of these negotiations on the content of the CSP has been quite limited, but this does not mean that they have been unimportant. In fact, we argue, the purpose of the negotiations was not so much to reach an agreement on the CSP (which both sides, from the outset, considered to be an unattainable aim anyway). The shared – if implicit – aim was rather an informal, *de facto* agreement that would allow for an uninterrupted continuation of bilateral relations despite the obvious and persisting differences over the substantial issue at hand. This underlying logic of the negotiation is clearly reflected in their consequences for international civil society support. While the CSP has had significant effects on Ethiopian civil society organizations, its effects on international civil society support in the country have been rather limited. Donors were mostly able to either unilaterally or in cooperation with the Ethiopian government adjust existing civil society programmes, bringing them in line with, or exempting them from, the CSP.

2. Ethiopia, civil society and foreign assistance: an overview

Ethiopia has a long tradition of civic organizing at the community level. However, it was the end of the military regime of the Derg in 1991 and the political liberalization under the Ethiopian People's Revolutionary Democratic Front (EPRDF) that facilitated the emergence of a broad range of formally established NGOs.⁹ Stimulated by increasing North-Western aid, "the number of active, Ethiopia-based NGOs grew exponentially, from 70 in 1994 to 368 in 2000, and to 2275 in 2009."¹⁰ In the 1990s, most organizations did not get involved in advocacy, human rights and/or electoral processes, but rather focused on service delivery. This, however, changed with the 2005 elections, which saw national and international NGOs play a much more active role. When opposition parties denounced fraud and large-scale post-electoral protests challenged the official results, the government violently cracked down on the protests and specifically accused civil society organizations and activists of supporting both the opposition and the violence.¹¹ In this context, the Ethiopian Ministry of Foreign Affairs also expelled three US-based organizations – the International Foundation for Electoral Systems (IFES), the International Republican Institute (IRI), and the National Democratic Institute (NDI) – from the country, "accusing them of operating in the country illegally and failing to report their activities to the government."¹²

The contested 2005 elections are generally regarded as the key experience that led the Ethiopian government to take an increasingly harsh attitude and adopt a series of laws that significantly restricted the space for CSOs.¹³ These legal initiatives included the Electoral Law of Ethiopia Amendment Proclamation (2007), the Mass Media and Access to Information Proclamation (2008) as well as the Anti-Terrorism Proclamation and the CSP (both 2009).

Before the CSP, the operation of CSOs in Ethiopia was not regulated by law but merely through executive stipulations (the 1966 Association Registration Regulation, updated through the 1995 Guidelines for NGO Operations).¹⁴ During the 1990s, Ethiopian CSOs themselves lobbied the government "to provide an up to date and enabling law for their operation".¹⁵

On January 6, 2009, the Ethiopian parliament adopted the CSP, with implementation starting one year later. The law applies to two types of nonprofit organizations that either pursue charitable purposes (Charities) or the interests of their members (Societies). These are grouped into three categories: "Ethiopian", "Ethiopian Resident", and "Foreign" organizations. The first category includes CSOs that are "wholly controlled by Ethiopians" and "use not more than ten percent of their funds which is received from foreign sources". Once local CSOs don't fulfil these criteria, they become "Ethiopian Resident" organizations. "Foreign" organizations include non-Ethiopian members or are controlled by foreign nationals (Article 2). This distinction is crucial because "Ethiopian Resident" and "Foreign" organizations are prohibited from participating in a range of activities, including the promotion of "human and democratic rights", "equality of nations, nationalities and peoples and that of gender and religion", "conflict resolution or reconciliation", and "justice and law enforcement services" (Article 14).¹⁶

All three types of organizations are required to register with the Charities and Societies Agency (CSA), which has "virtually unlimited authority to exercise control over the operations of a charity or society",¹⁷ including to decline their request for registration, to revoke licenses and to oversee their activities (Articles 4–6, 84–94). Explicitly

exempted from this proclamation are traditional, cultural or religious organizations as well as “international or foreign organizations operating in Ethiopia by virtue of an agreement with the Government” (Articles 3(2)), which shows that the CSP deliberately targets a specific NGO-type of CSOs.¹⁸

3. Negotiating the Charities and Societies Proclamation: issues and results

After a 2007 version of the CSP had been leaked in early 2008, the Ethiopian government forwarded a first official draft of the CSP to representatives of local CSOs on May 2, 2008, inviting them to a consultative meeting on May 6. This draft, which was much more “draconian in nature” than the leaked version from 2007,¹⁹ contained all the core regulations that would characterize the later law. During 2008, three more draft versions were circulated (in June, September and November) until the CSP was adopted in early January 2009.

Throughout this drafting process, Ethiopian CSOs, which had responded to the government’s call by establishing a joint taskforce, participated in consultative meetings with the government, prepared joint commentaries on the drafts, and organized forums to discuss the issue with government officials, experts and CSO representatives.²⁰ In the following, however, we will focus on the discussions between the Ethiopian authorities and international donors. According to Debebe Hailegebriel, a leading consultant of the taskforce of Ethiopian CSOs, the “international community played a significant role in exerting influence on the Ethiopian Government.”²¹ In particular, four in-depth meetings of the ambassadors from the US (Donald Yamamoto), the UK (Norman Ling) and France (Stephane Gompertz) with Ethiopian PM Meles Zenawi took place in May, June, July and October 2008. In addition, US representatives met with high-level officials of the Ethiopian government and the ruling EPRDF.²²

3.1. Overview of the process and the results of the negotiations

A few days after the first 2008 draft of the CSP was released, US Ambassador Yamamoto met with Ethiopian State Minister of Foreign Affairs Tekeda Alemu and “raised this issue in strong terms”, emphasizing that the new law would affect all US foreign assistance programmes in the country.²³ The US Embassy also reportedly called on officials in the Ethiopian government “to raise concerns about the draft law” and started to “cooperate with other major donors”. This culminated in the first meeting of the three ambassadors with PM Meles.²⁴ In this meeting, the ambassadors “raised deep concern that the new proposed NGO law [...] would so severely restrict NGO operations [...] that it would severely undermine Ethiopia’s relations with its most important donor partners.” Meles, in return, promised “to delay submission of the proposed law to the council of ministers until the ambassadors could submit in writing specific concerns and questions on the NGO law and follow-up discussion with the Prime Minister.”²⁵ The agreed-upon aim of the negotiations was, therefore, to clarify doubts concerning the planned legislation, including by revising the draft law.

The US Embassy, however, did not expect that more than minor revisions were likely to happen and, therefore, also used the negotiations to buy time and, through coordinated donor outreach activities to raise concerns with Ethiopian government and party officials, “seek to stop the law from progressing further.”²⁶ In addition to

using the negotiations to advocate “for a discrete set of technical alterations that would make the bill less prohibitive to civil society operations in Ethiopia”,²⁷ the North-Western ambassadors also aimed at applying “international pressure to either ‘kill’ or delay the bill.”²⁸ The other way round, the donors anticipated that PM Meles would use the negotiations only as a means to legitimize, through cosmetic changes, a basically unmodified law.²⁹

Before the second meeting in June, the ambassadors sent a joint letter to the government “outlining concerns” over the draft CSP. In response, PM Meles announced during the conversation that his government would redraft the bill in order to address “the confusion and misunderstandings over many of the provisions”.³⁰ The revised version, which was released in June and reportedly included a series of amendments, was then again subjected to discussions with local CSOs and international donors.

In the third meeting in July, which was again preceded by a joint letter to Meles,³¹ the ambassadors “passed over an analysis of the law prepared by the donors group”. The PM “said he would review the text and make changes to the proposed law, if necessary.”³² From the donors’ perspective, however, this third draft of the CSP proved but “a minimally revised version.”³³ This was reflected in the fourth meeting, in which Meles reiterated the willingness to continue the discussion “with foreign interlocutors”, albeit not with a view to further modify the draft law but in order “to get Ethiopia’s position better understood.”³⁴ The ambassadors continued to express “their fundamental opposition to the bill”, while also proposing adjustments “that would make the bill less prohibitive”.³⁵ Yet, the fourth draft released in November 2008 did, again, “not incorporate any of the changes requested or address any of the concerns raised by successive waves of donor ambassadors and principals from capitals.”³⁶

Finally, when this fourth draft was submitted to Parliament in early December, the US ambassador presented to key members of parliament “a technical analysis of the bill highlighting potential areas which may spur unintended consequences for foreign assistance and which offered minor changes that would make the bill less objectionable without violating the main tenets driving the bill.”³⁷

Comparing the different draft versions of the CSP with the law eventually adopted by parliament, the following revisions stand out:

- The preamble was modified, deleting explicitly restrictive references, including to the necessity of “the registration, licensing and regulation of charities and societies [...] for the prevention of the illegal acts that are perpetrated in the name of serving it, and for the fulfillment of the government’s duty to protect the public against illegal activities contrary to peace, order and morality.”³⁸
- An intermediary category (“Ethiopian Residents”) was introduced, thereby avoiding the label “foreign” for foreign-funded Ethiopian NGOs.
- The ten-percent threshold refers to the share of the funds actually used, not – as initially phrased – to the percentage of their total asset.
- The activities that are reserved for “Ethiopian” NGOs have been modified. In particular, development-related purposes (promotion of “community development” and of “the sustainable development of the nations, nationalities, and peoples of Ethiopia”) were deleted from the list of restricted areas. In turn, however, the promotion of gender equality and of the rights of disabled and children was added.

- The objectives, powers and functions of the CSA have been phrased in less restrictive (controlling) and more supportive (enabling) terms and made somewhat less intrusive.
- The need to renew the license of NGOs was changed from annually to every three years.
- Some harsh penalties, including the threat of imprisonment, were removed from the law.
- The right to appeal to the judiciary for “Ethiopian” NGOs was broadened beyond “questions of law” to include any “decision.”³⁹

According to Hailegebriel, the revisions were mostly “technical and cosmetic”, suggesting that the impact of the consultations on the CSP was rather limited.⁴⁰ In its official response to the adoption of the CSP, the EU, however, welcomed “the thorough exchanges of views” with the Ethiopian government and appreciated “that some of its concerns expressed on the draft have been addressed”, even if it duly noted that “core elements” of the law “remain unchanged” and “could potentially restrict the operations of civil society organisations, as well as international partners assistance.”⁴¹ The official response from Washington was less balanced and only expressed concerns, but in toned-down language: The US government showed itself “concerned” that the CSP “*appears to restrict* civil society activities and international partners’ ability to support Ethiopia’s own development efforts.”⁴²

What is largely absent from the negotiations is explicit threats. Very clearly, there was little room for the US, or international donors more broadly, to threaten with significant negative consequences for the Ethiopian government as a bargaining tool. First, given that the focus of US foreign assistance was in an area (humanitarian aid) not touched by the CSP, only a small share of US aid was likely to be affected by the new restrictions. Second, given its key strategic interests in Ethiopia,⁴³ the US never considered broader sanctions. Third, the Ethiopian authorities knew this: According to an US embassy assessment, the Ethiopian government was “confident that donors will not suspend or cut” foreign aid, “regardless of what actions the GoE [Government of Ethiopia] takes.”⁴⁴ As a result, indirect threats that the new NGO law could have “unintended consequences” for “development and other programs”⁴⁵ were, predictably, in vain. At the same time, this interest in not threatening the existing cooperation was mutual, as can be seen, for instance, in Ethiopian “assurances of exceptions [to the new restrictions] for U.S. assistance programs.”⁴⁶ Still, PM Meles made clear that threatening a reduction in foreign support would not lead to reconsideration on the part of the Ethiopian government.⁴⁷

In terms of the overall analytical framework of this special issue, the negotiations touched upon four different levels of depth: With a view to the (draft) NGO law, negotiations concerned (1) the overall content and specific provisions of the CSP (policy formulation) and (2) the ways in which this law would affect (or not) the implementation of individual programmes and projects (implementation); at a more general level, from the very beginning, the conversations also referred (3) to the political situation in Ethiopia, including what is needed in terms of improving its democracy (problem definition), and (4) to basic concepts and norms that underpin the regulation and support of civil society (normative premises). In fact, when reading the US embassy reports on the conversations, it is remarkable how immediately and consistently the parties ended up talking about very basic notions of democracy

(promotion) and civil society (support) and how these might and should be understood in the Ethiopian context.

3.2. Policy formulation

In terms of policy issues, a couple of specific topics stand out. US government officials and the three ambassadors regularly argued against the distinction between “Ethiopian” and “foreign” CSOs and the restrictions that were to come with being categorized as the latter, but quickly realized that the basic aim to restrict the areas of legitimate activity for those organizations that are either foreign or receive significant foreign funding was non-negotiable for the Ethiopian government.⁴⁸ The symbolic concession to label foreign-funded Ethiopian CSOs “Ethiopian Residents” instead of “Foreign” was apparently not seen as significant.⁴⁹ As a consequence, efforts focused on the restricted purposes. In the July meeting, for instance, Meles reportedly responded to the three ambassadors’ “concerns over restrictions in helping women, children and handicap” by arguing that “these are advocacy issues and it could not be accepted because these are distinctly Ethiopian issues for Ethiopians to address.”⁵⁰ Later, when US Assistant Secretary Kramer argued “that certain sectors, such as conflict resolution and children’s rights should not be considered inherently political, Meles responded that, in his view, conflict resolution typically deals with issues of land, water, religion, which are inherently political.”⁵¹ Judging from the revisions actually made to the CSP, it was only development-related purposes that the Ethiopian government accepted as not all-too political in nature.

Other policy issues raised by the donors included the powers of CSA, the reporting requirements, the question of sanctions/penalties, and the right to judicial appeal. Meles, in response,

said he would review and consult his advisors on the Ambassadors’ concerns over the proposed agency [...], as well as the criminalization of activities and administrative errors. He would also review again the lack of an appeal process for those CSOs/NGOs objecting to administrative decisions of the agency.⁵²

Later, he emphasized that the Ethiopian government had indeed addressed some of these concerns by “permitting court appeals [for ‘Ethiopian’ CSOs] on matters of both law and fact” and by eliminating “annual reporting requirements.”⁵³ In the end, as mentioned above, the power of the CSA was also gradually relaxed and penalties softened. In a conversation with US Assistant Secretary Kramer, Meles, however, explicitly rejected a right to judicial appeal for foreign organizations “by arguing that such organizations would only be operating in country by invitation from the GoE”. The US embassy accepted this argument as “pertinent for foreign-funded NGOs focused on political activities through an agreement with the GoE”, but noted that “it ignores the denial of judicial appeal to the far broader grouping of foreign-funded NGOs engaged in non-prohibited development activities.”⁵⁴

Finally, the US Embassy and the group of ambassadors aimed at shielding or exempting their own assistance programmes. US Assistant Secretary Kramer, for instance, “suggested creating possible carve-outs” for US-, EU-, and UN-funded projects. Meles, however, pointed to already existing “carve-outs.”⁵⁵ Indeed, already the first 2008 draft stated that the CSP would not be applicable to “international or foreign organizations operating in Ethiopia by virtue of an agreement with the [Ethiopian government]”.⁵⁶ This problem was, therefore, rather treated as an issue that concerned the implementation of the CSP.

3.3. Implementation

A major concern that permeates the US embassy cables is the donors' worries that their own foreign assistance programmes might be significantly affected by the new CSO law. In mid-June, the US Embassy reported that the "now inevitable" CSP "will likely force the termination of all U.S. and other donors' foreign assistance for democracy and governance, human rights, conflict resolution, and our important advocacy programs, particularly on behalf of women's rights."⁵⁷ The Ethiopian response to these concerns basically consisted in "assurances of exceptions [to the new restrictions] for U.S. assistance programs."⁵⁸ More generally, PM Meles emphasized that "continued involvement of foreign NGOs in political reform and advocacy" was acceptable if and when "there is a contract between the foreign NGO and a government entity for a specific time period."⁵⁹ For the US government, however, the problem persisted that, even if US programmes would be exempted from the restrictions, the CSP would still "prohibit significant support to Ethiopian CSOs to assist with the implementation of such programs."⁶⁰

The issue of reporting requirements of local CSOs was also discussed with a view to their future implementation. When Assistant Secretary Kramer noted

that the new Civil Society Agency's reporting requirements would be onerous on NGOs, Meles assured that copies of existing NGO reports provided to their funding agencies would suffice to meet the stipulated reporting requirement and that the CSA would strive to minimize additional reporting requirements.⁶¹

Generally, the Ethiopian government continuously argued that "the overwhelming part of foreign and local NGO activity in Ethiopia" would not be affected by the law and that implementation would be narrowly focused on "the area of internal politics."⁶² PM Meles suggested that, in order to "overcome the bitter and 'poisonous' discussion" on the draft law, it would be better to quickly adopt the CSP and "then work cooperatively with the CSO/NGO groups and donor community to make the new legislation work."⁶³ In fact, once the proclamation was approved by parliament, the donors started to focus on implementation. The three ambassadors "underscored Ethiopia's sovereign right to oversee and regulate all foreign activities but added that, depending on how the law is implemented, NGOs may find it impossible to operate in some areas, such as democracy and governance". They, therefore, emphasized "that there needs to be close coordination and dialogue to ensure that the implementation of the law will not be harsh or so restrictive as to force some NGOs to close operations."⁶⁴ Likewise, the EU, in its official response to the adoption of the CSP, expressed the hope "that the law will be implemented in an open-minded and constructive spirit".⁶⁵ The US Embassy, on its part, reported to Washington that the US, on behalf of the group of international donors, would "lead efforts to monitor the implementation of the CSO law in an effort to moderate potential excesses and prevent harsh implementation."⁶⁶

3.4. Problem definition

The negotiations also revealed fundamentally different perceptions of the main political challenges facing Ethiopia. According to the Ethiopian government, the CSP basically addresses two key problems with democracy and civil society (support) in Ethiopia.

The first one concerns a lack of regulation of CSOs. This has, first and foremost, negative implications for national security: As PM Meles explained to the ambassadors, the law was needed "to ensure CSOs and NGOs are truly focused on helping the

development of the country and not involved in illegal activities or sponsorship of extremist groups.”⁶⁷ In general, “anti-democratic sectors of society” are depicted as a crucial challenge to democracy and stability; this explicitly includes “opposition leaders”, which are seen as associated with the former Derg regime, opposed to the (democratic) constitution of the country and unwilling to engage in a genuine dialogue and refrain from violence.⁶⁸ EPRDF’s central committee member Bereket Simon explicitly argued “that NGOs are working closely with terrorists and undermining Ethiopia’s constitution.”⁶⁹ In a conversation with US Assistant Secretary of State Kramer,

Meles claimed that the intent was to divide NGOs between those engaged in political activities and those not. For those not engaged in political activities, Meles argued the purpose of the law was to provide transparency about funding and accountability about expenditures.⁷⁰

In another discussion with Kramer, Meles referred to the “lack of accountability” between civil society organizations and their constituents” that would be addressed by the new law: “Since foreign funding is ‘not earned,’ he argued, it produces money streams independent of its membership, automatically ‘inverting an organization’s accountability away from its constituents’ and creating ‘networks of rent-seeking’ NGOs and NGO heads.”⁷¹

The second problem, from the Ethiopian government’s perspective, concerned a lack of commitment or ownership of democratic norms in Ethiopian society: “to become a strong and vibrant democratic state that advocates for human/civil rights, it must have the political will and commitment to make sacrifices and to advance these issues.”⁷² The challenge ahead, therefore, was rather about “building lasting democratic institutions such as the policy, army, and judiciary”⁷³ than about empowering groups that might well threaten democracy and security.

The donor perspective was quite different. The three ambassadors emphasized “the importance to allow NGOs to operate freely and unrestricted in Ethiopia because of the work they provide for the development of Ethiopia.”⁷⁴ The US government continuously referred to the “backsliding on democracy and human rights” that Ethiopia had experienced since 2005.⁷⁵ This observation of a shrinking political space was explicitly rejected as factually wrong by the Ethiopian government.⁷⁶ However, it is interesting to note that the US embassy took the concerns raised by the Ethiopian government as genuine: For the embassy, the meetings “were crucial in eliciting the fundamental belief among ruling party hard-liners such as Bereket, that CSOs are undermining Ethiopia by supporting terrorists.”⁷⁷ But the US did explicitly disapprove “the notion that foreign support to civil society groups addressing democratic rights issues poses a threat to democratization” and also “rejected Meles’s assertion that foreign funding to enable domestic advocacy is undemocratic.”⁷⁸ This already points to the normative controversy that underlay the negotiations.

3.5. Normative premises

With a view to the normative premises at stake in the debate about civil society regulation/support,⁷⁹ the Ethiopian government basically referred to sovereignty and ownership as key norms underpinning the CSP. PM Meles emphasized “the right of the nation to restrict foreign entities from participating in the domestic politics of Ethiopia”. He added that such restrictions are also needed with a view to the (shared) normative aim to promote democracy in Ethiopia: “To be sustainable, Ethiopia must

achieve democratic standards on its own.” Democratic institutions and values, therefore, “must be born and developed by Ethiopians themselves” and “cannot, and must not, be imposed by outsiders or through money distributed to advance these issues”. “Without ‘ownership’”, Meles argued, “Ethiopia will not have a strong and sustainable democratic tradition.”⁸⁰ Exceptions to this basic norm of non-interference can only be granted by the Ethiopian government and should be temporary only.⁸¹ Pointing to “a difference of opinion on the role of civil society”, Meles argued that, while “non-citizens may have the privilege of being involved on such [political] issues, they do not have a right to be involved.”⁸²

In their responses, the donor representatives did not explicitly reject these normative arguments but tried to qualify them. According to a US embassy report, “the international community recognizes the need for enhanced regulation and oversight to regularize registration and establish procedures”, but emphasizes the “high anxiety that the new law will so restrict NGOs that their operations would be forced to close.”⁸³ With a view to the issue of ownership, the French Ambassador “argued that Ethiopia is on the democratic path so it is Ethiopian in nature. Providing assistance will help the process move faster, why deny groups assistance and retard such development?” Meles responded that “the plague of money also allows many groups to focus their work on definitions established by the donors in order to secure funding”. To make sure foreign assistance and foreign CSOs help democracy, support had to come “at the request of the government not imposed from the outside.”⁸⁴ Another counter argument made by donors is exemplified by Assistant Secretary Kramer’s suggestion “that Meles view donor-funded projects as transitional, designed to last only until such organizations are domestically independent and accountable.”⁸⁵ Likewise, in a public discussion on Ethiopia in Washington, Kramer acknowledged that “indigenous movements [should] lead the way” but argued that, given the lack of domestic funding, foreign donors are needed “for an interim period” in order to “give people the opportunity to establish roots and a firm foundation so that over time they don’t need to be relying or dependent on foreign funding.”⁸⁶

In the course of this normative controversy, diverging notions of democracy and democratization were frequently articulated.⁸⁷ Indeed, in the midst of the CSP negotiations, PM Meles suggested to establish “an on-going senior bilateral dialogue on democracy and human rights issues”, a proposal that was supported by the US Embassy.⁸⁸ On the part of Ethiopian government, one core argument was that shared values, and a common belief in “universal democratic principles”, would still take particular shapes in individual countries and would, therefore, develop in a specific way also in Ethiopia, “in accordance with its own culture.”⁸⁹ The US embassy, in its reporting to Washington, recognized the specific “guiding philosophy” that characterizes the Ethiopian leadership, namely a notion of “Revolutionary Democracy” understood “as a top-down obligation of convincing rural Ethiopians of what is in their best developmental and governance interest and providing the structures to implement that until the people can do it for themselves.”⁹⁰ In a conversation with US Ambassador Yamamoto in July 2009, PM Meles argued specifically that provisions in those laws, including the CSP, “which western and donor countries perceive as restrictive”, were indeed “counter to, and in conflict with, the ‘old paradigm’ of democracy”, but not necessarily “in conflict with democracy in Ethiopia”. The PM went on to suggest that the two governments, rather than trying to resolve specific “policy issues”, should address the “fundamental” differences between these “rival paradigms”, with a

view to furthering mutual understanding: “While you may not agree with us,’ he stressed, ‘you will understand where we are coming from, and vice versa.” In response, the US ambassador

noted that it will be important for the U.S. leaders to hear the philosophy behind Ethiopia’s pursuit of these laws and whether they build or detract from strong institutions. He noted that if these laws, when taken together, close political space, it will be an issue.

The US embassy concluded that “Meles finally acknowledged verbally Ethiopia’s fundamental difference with western approaches to democracy and development”: The “prevailing ideology” within the Ethiopian ruling party, “Revolutionary Democracy”, the embassy recognizes, “is fundamentally different from any sense of ‘democracy’ as commonly understood in the United States or western countries”; it is basically “a top-down approach through which political, economic, and even social activity must be either directed or condoned by the government (and ruling party).”⁹¹

4. Implementing the Charities and Societies Proclamation: the consequences for civil society (support)

As a result of the negotiations, the CSP was approved in a slightly modified version. The law remained very restrictive but, at least, opened up certain possibilities for local NGOs and international donors to adapt, most notably by allowing for development-related activities which, in previous draft versions, had been on the list of restricted purposes.

4.1. Consequences for local civil society

According to a study by Kendra Dupuy and colleagues, “Ethiopia’s NGO sector changed dramatically following the 2010 implementation of the Charities and Societies Proclamation.”⁹² These effects are mainly due to two factors: the dependence of almost all local NGOs on foreign funding;⁹³ and the fact that, prior to 2009, a broad range of organizations conducted projects in the broad area of democracy, governance and human rights that the CSP prohibits for foreign-funded organizations.⁹⁴ A comparison of the situation before (2009) and after (2011) the implementation of the CSP shows that 574 out of 2,275 local NGOs failed to re-register, while those that succeeded overwhelmingly (1,330 out of 1,701) did so by registering as “Ethiopian resident” organizations.⁹⁵ In order to continue receiving foreign funding, many NGOs had to adjust or rebrand their activities, focusing on development-related issues or service delivery.⁹⁶

While some human rights and civic advocacy groups rebranded and abandoned their rights-oriented work, others closed down their organization. According to one estimate, “only 12 or 13 of the 125 previously existing local rights groups” survived the implementation of the CSP.⁹⁷ Two prominent examples include the Ethiopian Human Rights Council (EHRCO), an organization that monitors and documents human rights violations, and the Ethiopian Women Lawyers Association (EWLA), a renowned association advocating for women’s rights. Re-registration, however, was far from easy, and the loss of foreign funding has meant that the two organizations were forced to cut 70–85 percent of their staff and scale down their activities accordingly.⁹⁸

Overall, the financial viability and the organizational capacities of Ethiopian CSOs “have been reduced significantly over the last five years or so.”⁹⁹ Still, the consequences

of the CSP have been selective. In fact, between 2008 and 2014, while CSOs working on rights issues “suffered setbacks and decline”, those organizations “engaged in development activities and service delivery (e.g. Ethiopian Resident Charities and international organisations) experienced growth.”¹⁰⁰ Furthermore, the CSP “has had little noticeable effect” on the broad range of CSOs outside the sector of national-level NGOs, that is, “for most community based organizations operating at the local level, for organizations registered and working in one region, and for membership-based organizations.”¹⁰¹

4.2. Consequences for international civil society support

International donors likewise had to adjust to the new regulatory framework, but – compared to Ethiopian CSOs – have been less affected by the CSP. International NGOs have been mostly successful in re-registering with the CSA, and their number in Ethiopia has dropped only marginally from 266 (2009) to 202 (2011); still, they had to rebrand and cut support to local NGOs that continued to work in the restricted areas.¹⁰² Overall data on foreign aid to Ethiopia shows that “[f]unding to CSOs remained fairly static over the period 2008 to 2011 and then increased substantially in 2011/12.”¹⁰³ According to a rough estimate, about three quarters of this foreign civil society aid are channelled through a small set of international NGOs and, more specifically, through humanitarian “emergency” funds, while a much smaller percentage goes to Ethiopian (“resident”) NGOs. The majority of donor agencies reported “that the Proclamation has not affected their funding mechanism either in the choice of sector or the category of CSO funded”. A relevant change, however, concerns the reduction in the number of local CSOs that are funded directly (from 43 in 2009 to 20 in 2013) and an increasing reliance on “umbrella or network organisations, which pass on grants to their partners or members”. Furthermore, civil society support is increasingly channelled through three major civil society funds: the World Bank-managed multi-donor initiative Ethiopian Social Accountability Program (ESAP2), the European Commission-funded Civil Society Fund (CSF2), and the multi-donor Civil Society Support Program (CSSP).¹⁰⁴

What is important for the issue at stake is that donors and the Ethiopian government made “a special arrangement” for two of these international civil society funds (ESAP2 and CSF2), which were officially categorized as domestic so that they can also support Ethiopian NGOs working in the restricted areas.¹⁰⁵ This arrangement shows that donors have been able to negotiate some limited space for governance- and rights-oriented civil society support. CSF2, for example, has funded civil society activities in areas like “access to justice”, “human and women’s rights”, “conflict transformation” and “consolidation of democracy”, while ESAP 2 “enabled certain CSOs, including rights advocacy organisations to access external funds.”¹⁰⁶ Yet, the arrangement also grants a veto position to the Ethiopian government which is directly involved in the steering committees.¹⁰⁷ According to then head of the EU Delegation in Ethiopia, Xavier Marchal, it has been “possible to do a lot of things” precisely because of the decision “to work keeping government authorities in the picture”.¹⁰⁸

The third international civil society fund (CSSP) has not been exempted from CSP restrictions. Hence, it is focused on “Ethiopian resident” organizations.¹⁰⁹ According to a mid-term review of the programme it has, however, been important in assisting CSOs to manage their finances in line with the stipulations introduced by the CSP. A key focus of the programme has been on improving the relations between CSOs and the

government at various levels, including with the CSA.¹¹⁰ In direct response to the CSP, the Donor Assistance Group (DAG) in Ethiopia also established an Adaptation Facility (AF1 and AF2) that assisted CSOs in coping with the changing legal environment.¹¹¹

A few organizations and programmes unsuccessfully tried to secure an exemption from the CSP and left Ethiopia in response. The Heinrich Böll Stiftung, for instance, closed its office in Addis Ababa after the German government's attempt to negotiate a special status for Germany's political foundations had failed.¹¹² Also, the USAID-funded Peace in East and Central Africa II Program, which supported local organizations in the area of peacebuilding in Kenya's border areas with Somalia, Ethiopia, Sudan and Uganda, cancelled its activities in Ethiopia after "a number of attempts [...] to secure an exemption for cross border peace building" had failed.¹¹³

Another strategy of international donors has been to work with registered Ethiopian NGOs that managed to secure exemptions from the CSP. It is unclear which and how organizations got this status, but examples of exempted organizations include Justice for All-Prison Fellowships of Ethiopia as well as the Peace and Development Center. USAID, for instance, cooperates with these two NGOs in the area of democracy and governance.¹¹⁴ Still, in response to a lack of policy space, USAID generally decided to dramatically reduce its activities in the area of democracy and governance and, instead, "include governance as a cross cutting issue through improved public sector accountability, conflict sensitivity and support to civil society."¹¹⁵ In contrast, civil society support by the National Endowment for Democracy (NED) has increased significantly, to 1,4 million USD in 2016 (NED 2017). In addition to NED core grantees from the US (Solidarity Center and the Center for International Private Enterprise), NED recently supported the above-mentioned Peace and Development Center in the area of "human and democratic rights education" as well as a series of nongovernmental partners that are not specified.¹¹⁶

5. Conclusion

Partial and partisan as they necessarily are, the US embassy cables document a process of intergovernmental negotiations that simultaneously deal with quite different issues. First, there is the explicit and concrete discussion on the planned NGO law. Referring to the provisions in the planned legislation (policy formulation) and to what these might mean in actual practice (implementation), the donor governments raise general concerns and propose specific changes, while the Ethiopian side responds with justifications, reassurances and concessions. This discussion is, second, embedded in a more general debate on the appropriate role and regulation of NGOs in Ethiopia (problem definition) as well as on the norms and basic values that underpin the domestic regulation or the international support of civil society organizations (normative premises). The latter type of discussion also touches upon fundamental disagreements that concern different notions of democracy underlying the diverging viewpoints.

With a view to the purpose of the negotiations, the parties did not aim at negotiating an NGO law that could be agreed upon by both sides (from the outset, this was clearly not a viable aim to begin with). The real aim was rather an informal, *de facto* agreement that would allow for an uninterrupted continuation of bilateral relations, including in the area of governance and democracy support, despite the obvious and persisting differences over the substantial issue at hand. This emerges very clearly as the shared

aim of both sides. In this sense, then, what we observe is a process of high-level communication in which the relationship between the Ethiopian government and the “donor community” in general and the US in particular is negotiated. As a result, the continuation of a practice of ongoing negotiations (“dialogue”) becomes the aim, and the benchmark of success, of these same negotiations. At the different levels (of depth) of the negotiations, this is the overall rationale that helps understand what motivates the parties: At the concrete, policy-oriented level, “donors” wanted to secure as much of the past practice of “cooperation” that it was used to, while the Ethiopian side was willing to make some minor concessions in order to guarantee basic continuity in bilateral relations; at the level of norms and values, dialogue mainly served to mutually affirm and recognize that there are diverging viewpoints but that the relationship is strong enough to withstand such differences and even enables such a frank controversy.

As a result, the Ethiopian government was able to adopt the CSP as originally envisaged, with only minor revisions. This certainly reflects the weak bargaining position of external actors that were not willing to risk cooperative relations with an important regional ally. But it also corresponds to the – quite remarkable – argumentative strength of the Ethiopian government vis-à-vis the “donor community”. At the discursive level, the *normative* position of the Ethiopian authorities that consistently emphasized ownership and the need to construct its own version of democracy was mostly accepted by the donor governments. The latter rather made the *empirical* argument that the Ethiopian government’s strategy was, in fact, aimed at repressing dissent. This claim, valid as it may be, was easily rejected by the Ethiopian side, which could simply present an empirical counternarrative (highlighting the risks to societal peace and political stability as posed by opposition-aligned CSOs). This finding suggests an interesting version of the general tendency of negotiations to level the playing field.¹¹⁷ Given the normative structure of intergovernmental relations, which both sides present as a horizontal partnership, the party that aims at interfering in the internal affairs of the other tends to be on the defensive.

The underlying logic of the negotiations – as an exercise in relationship management – is clearly reflected in the consequences they have had for international civil society support in the country. While the CSP has had significant effects on local civil society organizations, its effects on international civil society support have been rather limited. By and large, donors either unilaterally or in cooperation with the Ethiopian government adjusted existing civil society programs, bringing them in line with, or exempting them from, the new regulatory framework. The actors that have obviously suffered from these political dynamics at the level of intergovernmental relations are the human rights groups and activists in Ethiopia.

Notes

1. See, amongst others, Babayan and Risse, *Democracy Promotion and the Challenges of Illiberal Regional Powers*; Burnell and Youngs, *New Challenges to Democratization*; Christensen and Weinstein, “Defunding Dissent”; Poppe and Wolff, “Contested Spaces”.
2. Dupuy et al., “Hands Off My Regime”.
3. Carothers and Brechenmacher, *Closing Space*, 58.
4. See Carothers and Brechenmacher *Closing Space*; Christensen and Weinstein, “Defunding Dissent”; Dupuy et al., “Hands Off My Regime”; Poppe and Wolff, “Contested Spaces of Civil Society”; Rutzen, “Aid Barriers”.

5. See Carothers and Brechenmacher, *Closing Space*, 8; Christensen and Weinstein, "Defunding Dissent," 80; Dupuy et al., "Hands Off My Regime," 300–1; Rutzen, "Aid Barriers", 14.
6. Dupuy et al., "Who Survived?," 433.
7. Ethiopia, "Proclamation No. 621/2009". See also Hailegebriel, "Ethiopia," 18–9; Hayman et al. "Legal Frameworks and Political Space," 14–5; Yeshanew, "CSO Law in Ethiopia," 372–3.
8. These diplomatic cables will be cited in brackets, giving the official code (XXADDISABA-BAXXXX) by which they can be identified and found at <https://wikileaks.org>.
9. Clark, *Civil Society, NGOs, and Development*, 1; ICNL, "Civic Freedom Monitor: Ethiopia"; Yeshanew, "CSO Law in Ethiopia," 371. In this paper, the term NGOs refers to formally established not-for-profit organizations that claim to represent some general public interest. The term CSOs broadly refers to all kinds of organized groups that are neither governmental nor for-profit.
10. Dupuy et al., "Who Survived?," 425. See also Yeshanew, "CSO Law in Ethiopia".
11. See Dupuy et al., "Who Survived?," 425; Hailegebriel, "Ethiopia," 19–23.
12. Carothers and Brechenmacher, *Closing Space*, 14.
13. See Dupuy et al., "Who Survived?"; Hailegebriel, "Ethiopia"; ICNL, "Civic Freedom Monitor".
14. See Clark, *Civil Society, NGOs, and Development*, 12–3; Yeshanew, "CSO Law in Ethiopia," 370.
15. Cerritelli et al., *Mapping Study of Non State Actors*, 40.
16. Ethiopia, "Proclamation No. 621/2009".
17. ICNL, "Civic Freedom Monitor".
18. As Dupuy et al. ("Who Survived?," 447, note 22) note, the CSP also "privileges mass-based local organizations", which are generally considered "important tools" for mobilizing support of the government.
19. 08ADDISABABA1223.
20. Hailegebriel, "Ethiopia," 24–5. See also Cerritelli et al., *Mapping Study of Non State Actors*, 40–2.
21. Hailegebriel, "Ethiopia," 25.
22. In drawing mainly on leaked US embassy cables, the following analysis necessarily focuses on the US, although the reports also include substantive references to the above-mentioned series of joint meetings between PM Meles and the three ambassadors. Given that the donor community, in this case, spoke with an unusually "unified voice" (Hailegebriel, "Ethiopia," 25), our observations are arguably representative for the overall process of negotiations.
23. 08ADDISABABA1223.
24. 08ADDISABABA1223.
25. 08ADDISABABA1259.
26. 08ADDISABABA1223.
27. 08ADDISABABA2846.
28. 08ADDISABABA2103.
29. 08ADDISABABA2103.
30. 08ADDISABABA1593.
31. 08ADDISABABA2105.
32. 08ADDISABABA2105.
33. 08ADDISABABA2482.
34. 08ADDISABABA2846.
35. 08ADDISABABA2846.
36. 08ADDISABABA3100.
37. 08ADDISABABA3381.
38. Ethiopia, "Charities and Societies Draft Proclamation."
39. Compare Ethiopia, "Charities and Societies Draft Proclamation," and Ethiopia, "Proclamation No. 621/2009".
40. Hailegebriel, "Ethiopia," 24. See also 09ADDISABABA31.
41. EU, "EU Presidency Declaration".
42. Wood, "New Ethiopian Law Restricts NGO Activities" (emphasis added).
43. Carothers and Brechenmacher, *Closing Space*, 38; Dupuy et al., "Who Survived?," 444.
44. 08ADDISABABA1672.
45. 08ADDISABABA1223.
46. 08ADDISABABA1850.
47. See 08ADDISABABA2846.
48. See 08ADDISABABA2846.

49. At least, this revision was not reported as such in any of the embassy cables analyzed. In fact, the embassy continued to talk about the distinction between “Ethiopian” and “Foreign” organizations only. See 08ADDISABABA2482 and 08ADDISABABA3100.
50. 08ADDISABABA2105.
51. 08ADDISABABA2945.
52. 08ADDISABABA2105. See also 08ADDISABABA2846.
53. 08ADDISABABA2945.
54. 08ADDISABABA2103.
55. 08ADDISABABA2945.
56. Ethiopia, “Charities and Societies Draft Proclamation.”
57. 08ADDISABABA1672.
58. 08ADDISABABA1850.
59. 08ADDISABABA1593.
60. 08ADDISABABA2482.
61. 08ADDISABABA2103.
62. 08ADDISABABA2561.
63. 08ADDISABABA2105.
64. 09ADDISABABA63.
65. EU, “EU Presidency Declaration”.
66. 09ADDISABABA63.
67. 08ADDISABABA1593.
68. 08ADDISABABA2078.
69. 08ADDISABABA2103.
70. 08ADDISABABA2103.
71. 08ADDISABABA2945.
72. 08ADDISABABA1593.
73. 08ADDISABABA2078.
74. 08ADDISABABA1259.
75. 08ADDISABABA2078.
76. 08ADDISABABA2078. See also 09ADDISABABA258.
77. 08ADDISABABA2103.
78. 09ADDISABABA257.
79. See Poppe and Wolff, “Contested Spaces”.
80. 08ADDISABABA2105.
81. See 08ADDISABABA1593.
82. 08ADDISABABA2103.
83. 08ADDISABABA1593.
84. 08ADDISABABA2105.
85. 08ADDISABABA2945.
86. Kramer, “Human Rights and Governance”.
87. See 08ADDISABABA2078; 08ADDISABABA2103.
88. 08ADDISABABA2078.
89. 09ADDISABABA107. See also 08ADDISABABA2078.
90. 09ADDISABABA1469.
91. 09ADDISABABA1770.
92. Dupuy et al., “Who Survived?,” 431.
93. Hailegebriel, “Ethiopia,” 20–21; Yeshanew, “CSO Law in Ethiopia,” 373–37.
94. FFS and Atos, “CSO in Ethiopia,” 28.
95. Dupuy et al., “Who Survived?,” 432, Table 2.
96. See Dupuy et al., “Who Survived?,” 431–5; ECSF, “Research on Charities and Societies,” 44; Yeshanew, “CSO Law in Ethiopia,” 375–6.
97. Dupuy et al., “Who Survived?,” 433. See also Yntiso et al., “Non-State Actors in Ethiopia,” 46.
98. Amnesty International, *Stifling human rights work*, 13. See also Dupuy et al., “Who Survived?,” 441; Yeshanew, “CSO Law in Ethiopia,” 376.
99. ECSF, “Research on Charities and Societies,” 8.
100. Yntiso et al., “Non-State Actors in Ethiopia,” 18.
101. Hayman et al., “Legal Frameworks and Political Space,” 15.

102. Dupuy et al., "Who Survived?," 432, 435–6; ECSF, "Research on Charities and Societies," 44.
103. TECS, "Trends in Donor Funding," 5.
104. Ibid., 3–5.
105. ECSF, "Research on Charities and Societies," 15.
106. Yntiso et al., "Non-State Actors in Ethiopia," 59.
107. See Yntiso et al. Non-State Actors in Ethiopia," 20, 55.
108. Quoted in EU, "Lessons From Implementing the Civil Society Fund".
109. CSSP, "Report Civil Society Support Programme," 32–3.
110. Itad, "Ethiopian Civil Society Support Programme," 2, 6.
111. Yntiso et al., "Non-State Actors in Ethiopia," 18.
112. Carothers and Brechnmacher, *Closing Space*, 15.
113. USAID, "The Peace in East and Central Africa Phase II Program," 6.
114. See USAID, "Country Development Cooperation Strategy 2011-2015," 62, 66; USAID, "Ethiopia".
115. USAID, "Country Development Cooperation Strategy 2011-2015," 5.
116. NED, "Ethiopia 2016."
117. See Zartman and Rubin, *Power and Negotiation*, and the introduction to this special issue.

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